

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for)
Approval, Pursuant to Revised Code)
Section 4929.11 of Tariffs to Recover) Case No. 05-1444-GA-UNC
Conservation Expenses and Decoupling)
Revenues Pursuant to Automatic)
Adjustment Mechanisms and for Such)
Accounting Authority as May be Required)
to Defer Such Expenses and Revenues for)
Future Recovery through Such)
Adjustment Mechanisms.)

**MOTION TO COMPEL RESPONSES TO SECOND SET OF DISCOVERY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Pursuant to Ohio Adm. Code 4901-1-12, 4901-1-13, and 4901-1-23, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of Vectren Energy Delivery of Ohio, Inc. ("Vectren," "VEDO" or "Company"), moves the Public Utilities Commission of Ohio ("PUCO" or "Commission"), the legal director, the deputy legal director, or the attorney examiner assigned to the case for an order compelling the Company to fully respond to OCC's Second Set of Interrogatories ("Interrogatories") and Requests for Production (Collectively, "Discovery"), which is attached hereto as Attachment 1. The reasons supporting this motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. BACKGROUND

In this phase of the proceeding, the Commission is considering the appropriateness of the January 12, 2007 Stipulation¹ entered into between Vectren Energy Delivery, Inc. (“Vectren” or “Company”), Ohio Partners for Affordable Energy (“OPAE”) and the Staff of the Public Utilities Commission of Ohio. The Attorney Examiner has ruled that OCC is entitled to conduct, *inter alia*, pre-hearing discovery,² present supplemental and rebuttal testimony, and cross-examine witnesses called to

¹ While OCC believes the scope of the proceeding should be much wider and should include going back to the original application of the company based on the broad language of paragraph 13, and the *East Ohio Gas* precedent, OCC has attempted to tailor its discovery efforts consistent with the Attorney Examiner’s directive.

² Vectren makes repeated objections to the discovery subject to this motion to compel on the basis that “the discovery sought should have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.” Based on the Attorney Examiner’s ruling of February 12, 2007, expressly permitting pre-hearing discovery by OCC, OCC does not deem it necessary to address this objection. *See Entry* at 9-10 (February 12, 2007).

support the Stipulation.³ OCC's right to a hearing emanates from the express terms of the April Stipulation, of which OCC, Vectren, and OPAE were signatory parties.⁴

On February 13, 2007, Vectren filed non-responses or objections to OCC's Second Set of Discovery. Vectren has not sought a protective order with respect to this discovery, although it has sought in its motion in *limine* filed February 15, 2007, to "limit the scope of all future aspects of this proceeding to new issues raised by the January 12, 2007 Amended Stipulation and Recommendation."⁵ Vectren argues that there are no new issues in this proceeding, so there should be no further opportunities to conduct pre-trial discovery. Supplemental and rebuttal testimony would be prohibited, and cross-examination shut down.⁶

OCC's discovery is reasonably calculated to lead to the discovery of admissible evidence, consistent with the standard for discovery under Ohio Adm. Code 4901-1-16 and is directly related to the statutory and administrative filing requirements of the alternative regulation plan in this case. Vectren repeatedly asserts that the discovery "seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 *Opinion and Order* and November 8, 2006 *Entry on Rehearing*." If Vectren's objections are permitted to stand –

³ *Entry* at 9-10 (February 12, 2007).

⁴ *Id.*

⁵ Motion for Protective Order, Motion in *Limine* and Memorandum in Support of Vectren Energy Delivery of Ohio, Inc. at 9 (February 15, 2007).

⁶ *Id.*

particularly in light of the *Entry* permitting discovery – OCC’s due process rights to discovery under R.C. 4903.082 and Ohio Adm. Code 4901-1-16 will be prejudiced.

II. STANDARD OF REVIEW

According to the Commission, “the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side’s industry or efforts.”⁷ The Commission’s rules on discovery “do not create an additional field of combat to delay trials or to appropriate the Commission’s time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings.”⁸

Specifically as it relates to Vectren’s non-responses or objections to OCC’s Second Set of Discovery, OCC is properly allowed discovery. Indeed in the only other gas alternative regulation proceeding this Commission has seen, the Commission recognized this important distinction -- “Granting these waivers does not preclude the Staff from obtaining the information waived through data requests if subsequently deemed *necessary to complete the Staff’s investigation effectively and efficiently.*” *In the Matter of the Application the Cincinnati Gas and Electric Company for an Increase in its Gas Rates and for Approval of an Alternative Regulation Plan for its Gas Distribution Service*, PUCO Case Nos. 01-1228-GA-AIR and 01-1478-GA-ALT (Entry July 26, 2001 at 2) (Emphasis supplied).

⁷ *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, *Entry* at 23 (March 17, 1987).

⁸ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76 (1971).

This is entirely consistent with R.C. 4903.082 which states that the OCC and “[a]ll parties and intervenors shall be granted ample rights of discovery.” Accordingly, OCC, as party and intervenor, is entitled to timely and complete responses to its discovery inquiries. R.C. 4903.082 directs the Commission to ensure that parties are allowed “full and reasonable discovery” under its rules. Accordingly, the Commission has adopted Ohio Adm. Code 4901-1-16(B) that provides:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Although the Ohio Supreme Court and this Commission have recognized the concept of privilege (as Vectren broadly asserts here), privilege cannot be lightly assumed – the burden of proving an entitlement to privilege must be met by the person asserting the privilege.⁹ Application of privileges – such as the attorney client and the attorney work product – is not automatic.¹⁰ Where a party claims privilege in response to discovery, the party asserting the privilege is required to identify those parts to which it is objecting and the reasons for each objection.¹¹ Courts have held that this means that the party resisting discovery must identify and list the information which it seeks to withhold,

⁹ See *In the Matter of the Complaint of the Office of the Consumers' Counsel on Behalf of the Residential Customers of the Dayton Power & Light Company v. The Dayton Power and Light Company*, Case No. 90-455-GE-CSS Entry at 5 (August 16, 1990); *Waldmann v. Waldmann*, 48 Ohio St. 2d 176, 178 (1976).

¹⁰ *Chuparkoff v. Farmers Insurance of Columbus, Inc.*, 2004 Ohio 7185; 2004 Ohio App. LEXIS 6650 (C.A. Summit 2004).

¹¹ Ohio Civil Rule 34(B).

explicitly identifying the allegedly privileged items.¹² Failure of a party to list documents and material which it deems privileged or provide any corroborative evidence to support its blanket assertion that the documents and materials are privileged may result in itself of a waiver of those privileges.¹³

Additionally, even if privileges are found to exist, and the party resisting discovery has timely met its burden of proof, a parties' behavior may constitute waiver of these privileges. For instance, in Ohio the attorney-client privilege is governed by statute, R.C. 2317.02(A).¹⁴ Under that statute, the testimonial privilege is waived "if the client voluntarily testifies."¹⁵ The work product privilege may also be waived by parties' conduct. While the work product doctrine is derived from Ohio Civil R. 26(B)(3), courts have recognized that if the work product sought to be discovered is directly at issue in the case, it is deemed discoverable regardless of the other considerations.¹⁶ In such cases the work product privilege is waived.¹⁷

Finally, it should be noted that the attorney-work product is only conditionally privileged from disclosure under Ohio Civil Rule 26(B)(3). A showing of good cause allows discovery of work product: "*a party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party*

¹² See for example, *McPherson v. Goodyear Tire & Rubber*, 146 Ohio App. 3d 441, 444 (D. Ohio 2001), citing *Amcast Indus. Corp. v. Detrex Corp.*, 138 F.R.D. 115, 121 (N.D. Ind. 1991) and *Houdstermaatschaap BV v. Apollo Computer, Inc.*, 707 F. Supp. 1429, 1439 (D.Del. 1989).

¹³ *Id.* at 445.

¹⁴ *Jackson v. Greger*, 110 Ohio St. 3d 488, 489-490 (2006).

¹⁵ *Id.*

¹⁶ *Schaefer v. Garfield Mitchell Agency, Inc.*, 82 Ohio App. 3d 322, 334 (C.A. Ohio 1992).

¹⁷ *Id.*

*or by or for that other party's representative... upon a showing of good cause therefore.*¹⁸

“Good cause” requires a showing of substantial need, that the information is important in the preparation of the party’s case, and that there is an inability or difficulty in obtaining the information without undue hardship.¹⁹

In Ohio Adm. Code 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of the discovery rights guaranteed above by law and rule. Rule 23(A) and (B) provide for a PUCO order that a party answer discovery when the party has failed to do so, including when answers are evasive or incomplete.

The information sought is necessary and is important to the preparation of OCC’s case. If Vectren does not produce the information sought in the discovery requests at issue, it will be difficult, if not impossible, for OCC to otherwise obtain the information. OCC will be unable to obtain the information without undue hardship. It is within this context that the Commission should grant OCC’s Motion to Compel.

III. ARGUMENT

The OCC submitted its second set of discovery to Vectren on January 24, 2007, which was served by electronic message, consistent with Ohio Adm. Code 4901:1-1-05(C)(4), with the consent of Vectren. On February 13, 2007, Vectren served its responses to OCC’s second set of discovery.²⁰ OCC moves to compel the Company to

¹⁸ Ohio Civil Rule 26(B)(3).

¹⁹ See *In the Matter of the Complaint of the City of Huron v. Ohio Edison Company*, Case No. 03-1328-EL-CSS Entry at 6-8 (August 2, 2005), citing *Jackson v. Greger*, 160 Ohio App. 3d 258 (2005).

²⁰ Vectren did not expedite the discovery responses, despite making representations at the pre-hearing conference that it would endeavor to do so.

respond to the following Discovery. OCC seeks a ruling from the Commission that the objections to Discovery are not justified, and further OCC requests a Commission Entry ordering that Discovery responses be expeditiously served upon OCC.

Interrogatories 29 - 39:

These interrogatories all pertain to the statutory and administrative requirements for alternative rate plans pursuant to R.C. 4929.02, 4909.15, 4929.02 (A)(9); Ohio Adm. Admin Code 4901:1-19-05; 4901:1-19-05 (A)(2); 4901:1-19-05 (C)(1), (3); and 4901:1-19-05(C)(2) (a)-(j). Because the Commission has declared that this case will be decided pursuant to the laws governing alternative rate plans, the discovery is clearly relevant and Vectren's objections based on relevancy should be summarily disregarded.

Vectren further objects to providing this information because OCC's requests are vague, unreasonably overbroad and unduly burdensome.²¹ OCC believes these discovery requests are not overbroad nor unduly burdensome.

These interrogatories asked specific questions related to either the statutory or administrative requirements for implementing an alternative rate plan in Ohio. Vectren objects on the basis that the OCC seeks discovery that is irrelevant, not calculated to lead to admissible evidence, does not relate to "new issues" raised by the January 12 Stipulation, is out-of-time, and requests legal conclusions. Vectren also objects broadly on grounds of attorney-client privilege and attorney work product. This discovery is related to Vectren's position on the issues and law presented by the stipulation. It is

²¹ Despite claims of burdensomeness, Vectren has not moved for a protective order to prevent discovery on this ground under Ohio Adm. Code 4901:1-24(A). Moreover, it is unclear how providing responses to matters which will be considered at hearing will be unduly burdensome.

difficult to understand how disclosure of Vectren's position on the issues inherently linked to the stipulation, as distinguished from its trial strategy or specific privileged facts or documents, falls into any of these protected categories.²²

Additionally, Vectren bears the burden of proving the existence of any asserted privilege and must do more than baldly assert that it exists -- it must identify and list the information which it seeks to withhold, and it has failed to do so here. Once Vectren has provided such information (assuming the Attorney Examiner gives Vectren a second chance to meet its burden of proof and does not treat the initial failure of Vectren as a waiver of the privilege) it would be appropriate for the Attorney Examiner to conduct an *in camera* review of the information in question to determine whether these are valid claims²³.

Even if the Attorney Examiner were to determine through *in camera* inspection that the information sought constitutes privileged information, the Attorney Examiner should nonetheless rule that the filing of the stipulation, and submission into evidence in this proceeding, constitutes a waiver of these privileges.²⁴ The Commission should, based on good cause, permit OCC to obtain discovery of the information requested. The information sought is necessary and essential to the preparation of OCC's case, and OCC will be unable to obtain the information elsewhere.

²² See for example, *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI Entry at 14-15 (March 17, 1987) (holding that the positions of the parties are not privileged and are subject to discovery).

²³ *In re: subpoena duces tecum served upon Attorney Potts*, 100 Ohio St. 3d 97 (2003) (holding that when a claim of privilege is raised an *in camera* inspection by the trial court must occur so that the court can determine the specific issue based upon its actual review of the records claimed to be privileged).

²⁴ See discussion *supra*.

Similarly, the work product privilege has been waived by placing the stipulation directly in issue in this proceeding.²⁵ Finally, even if the work product privilege is found to have been sufficiently established by Vectren, and not waived by its actions, the Commission should, based on good cause, permit OCC to obtain discovery of the information requested. The information sought is substantially needed by OCC, is important to the preparation of OCC's case, and OCC will be unable to obtain the information elsewhere.

Regarding Interrogatories 29, 30, and 38 Vectren also asserts they seek legal conclusions. This is erroneous. The questions are asked to determine the factual basis upon which Vectren purports to meet the enumerated statutory requirements. Even assuming arguendo that a legal conclusion is called for, Ohio Admin. Code 4901-1-19(b) states, "[a]n interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion..." Accordingly, there is no basis for Vectren's objections and it should be compelled to answer.

Interrogatories 40, 41, 43, 44:

These interrogatories were directed toward statements contained in Witness Ulrey's testimony filed in this case. All the Interrogatories at issue relate to alternative rate plans including, *inter alia*, filings, statutory and administrative requirements, and how such requirements have or have not been met in this proceeding.

The Commission views the stipulation as an alternative rate plan. For this reason financial data required pursuant to the alternative regulation rules for gas utilities, Ohio Admin. Code 4901:1-19 *et seq.*, are directly relevant to any alternative rate plan

²⁵ *Schaefer v. Garfield Mitchell Agency, Inc.*, 82 Ohio App. 3d 322, 334 (C.A. Ohio 1992).

contemplated by the Commission. Vectren objects on the basis that the request is vague, ambiguous, and unreasonably overbroad. Vectren also objects on the basis of relevancy. Vectren's objections should be overruled. For the reasons stated regarding interrogatories No. 29 – 39, *supra*, OCC requests that the Commission find the objections to these Interrogatories are not justified, and order the Company to answer these Interrogatories on an expedited basis.

Request for Production No. 34, 35, 36, and 38:

The information sought in these Requests for Production is calculated to lead to the discovery of evidence related to whether the stipulation benefits ratepayers and is in the public interest. This analysis requires evaluation of financial data that is clearly relevant because it is one of the standard filing requirements related to gas alternative regulation plans. See 4901:1-19 (4) and (5) required to be filed pursuant to the Ohio Administrative Code. The relevancy of such information is not lost even when such administrative filing requirements have been waived. *In the Matter of the Application of the Cincinnati Gas and Electric Company for an Increase in its Gas Rates and for Approval of an Alternative Regulation Plan for its Gas Distribution Service, supra*. Also, whether there are benefits to the public, and the magnitude of such benefits, is directly relevant to this proceeding as well as to the second prong of the stipulation test. Any inquiry allowed under discovery should include what benefits are being reaped by the company and customers in this deal.

For the reasons stated regarding interrogatories No. 29 – 39, *supra*, OCC requests that the Commission find the objections to these Interrogatories are not justified, and order the Company to answer these Interrogatories on an expedited basis.

Request to Produce No. 37:

This request to produce relates directly to the statutory notice requirements for authorizing an alternative rate plan. The notice requirement is statutory under R.C. 4929.05, and cannot be waived. The notice requirement is jurisdictional and must be met by the company for the Commission to have the authority to authorize an alternative rate plan.²⁶

For the reasons stated regarding interrogatories No. 29 – 39, *supra*, OCC requests that the Commission find the objections to these Interrogatories are not justified, and order the Company to answer these Interrogatories on an expedited basis.

IV. CONCLUSION

Pursuant to R.C. 4903.082 and Ohio Admin. Code 4901-1-16 and other authority and reasons stated above, the Attorney Examiner should grant OCC's Motion to Compel. OCC's discovery is reasonably calculated to lead to the discovery of admissible evidence, consistent with the standard for discovery under Ohio Admin. Code 4901-1-16 and is relevant to this phase of the Company's alternative regulation plan. The Commission's own precedent in alternative rate plan cases, Supreme Court rulings, as well as other Commission precedent, support the discoverability of the information requested.

OCC also requests pursuant to Ohio Admin Code 4901-1-23(F)(3)(4) that Vectren be prohibited from supporting or opposing claims or defenses which are the subject of the second set of discovery, or from introducing evidence or conducting cross-

²⁶ In *Gallion v. Am Fedn. Of State, Cty, & Mun. Emp*, 71 Ohio St. 3rd 626 (1995), the Ohio Supreme Court Stated, "In our view the language of R.C. 2711.13 is clear, unmistakable, and above all mandatory...[if the statutory requirements are not met] the trial court lacks jurisdiction." (Bracketed explanation supplied).

examination; and that the pending proceeding be dismissed. Dismissal is a remedy available because this proceeding was initiated by an application, petition, or complaint filed by the Vectren – the disobedient party.

Moreover, the attorney-client privilege and the attorney work product privilege, even if proven to exist, may be waived by actions of the claimant. Here, Vectren's filing of the stipulation and recommendation, and requesting the stipulation and recommendation be submitted for Commission approval, amounted to a waiver of the privilege under R.C. 2317.02(A) and under Ohio courts' precedent.

The discovery requested in this Second Set is related, *inter alia*, to Vectren's position on the issues and law presented by the stipulation. It is difficult to understand how disclosure of Vectren's position on the issues inherently linked to the stipulation, as distinguished from its trial strategy or specific privileged facts or documents, falls into any of these protected categories.²⁷

The genesis of this case was to make available to consumers in southwest Ohio the opportunity to better control their energy usage and natural gas bills from Vectren, to be part of an Ohio and regional synergy to reduce demand and thereby prices for energy and to reap related and leveraged benefits of reducing state dependence on foreign energy sources. This case provided a watershed opportunity to bring the benefits of energy efficiency to Ohioans. The case now appears to be positioned to bring great costs with few benefits to Ohio consumers.

²⁷ See for example, *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI Entry at 14-15 (March 17, 1987) (holding that the positions of the parties are not privileged and are subject to discovery).

The Commission has the opportunity, once lost in the rejection of the original OCC settlement with Vectren, to regain for Ohioans the benefits of energy efficiency that include greater customer control over energy bills, reductions in the demand and price for energy, and greater independence of Ohio and America from offshore sources of energy. The Commission should embrace this opportunity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically this 27th day of February 2007.



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**RESPONSE TO INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS PROPOUNDED TO VECTREN ENERGY DELIVERY OF
OHIO, INC.**

**BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
SECOND SET**

(February 13, 2007)

Pursuant to Ohio Admin. Code §§ 4901:1-19, 4901:1-20 and 4901:1-22, Vectren Energy Delivery of Ohio (VEDO or the Company) submits its responses to the Ohio Consumers' Counsel's Interrogatories, Requests for Production of Documents, and Requests for Admissions, Second Set.

GENERAL OBJECTIONS

**GENERAL OBJECTIONS COMMON TO ALL INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS:**

1. **VEDO objects to each and every Interrogatory, Request for Production of Documents, and Request for Admission to the extent that they are irrelevant, or that they call for responses beyond the scope of this proceeding, not reasonably calculated to lead to the discovery of admissible evidence. See O.A.C. Rule 4901-1-16(B).**

2. **VEDO objects to and declines to respond to each and every Interrogatory, Request for the Production of Documents, and Request for Admission to the extent that it seeks information that is privileged by statute or common law, including privileged communications between attorney and client, attorney work product, or trial preparation materials. See O.A.C. Rule 4901-1-19(B).**

3. **VEDO objects to and declines to respond to each and every discovery request to the extent that it is harassing, unduly burdensome, oppressive or overbroad. Ohio Admin. Code §§ 4901-1-16(B) and 4901-1-24(A).**

4. **To the extent that OCC's interrogatories seek relevant information which may be derived from the business records of VEDO or from an examination or inspection of such records and the burden of deriving the answer is the same for OCC as it is for VEDO, VEDO may specify the records from which the answer may be derived or ascertained and afford OCC the opportunity to examine or inspect such records. Ohio Admin. Code § 4901-1-19(D).**

- 5. VEDO objects to and declines to respond to each and every discovery request to the extent that it calls for information that is not in VEDO's current possession, custody, or control or could be more easily obtained through third parties or other sources. Ohio Admin. Code § 4901-1-19(C) and 4901-1-20(D). VEDO also objects to and declines to respond to each and every discovery request that seeks information that is already on file with the Public Utilities Commission of Ohio. To the extent that each and every discovery request seeks information available in pre-filed testimony, pre-hearing data submissions and other documents that VEDO has filed with the Commission in the pending or previous proceedings, VEDO objects and declines to respond to it. Ohio Admin. Code § 4901-1-16(G).**

- 6. The production of any documents by VEDO does not and shall not constitute any admission concerning a document, its content, or the evidentiary sufficiency of the document, including but not limited to authentication, best evidence, relevance or hearsay.**

- 7. VEDO objects to each and every request to the extent that it is vague or ambiguous or contains terms or phrases that are undefined and subject to varying interpretation or meaning, and may, therefore, make responses misleading or incorrect.**

8. **All responses of VEDO to the Interrogatories, and Requests for Production of Documents, are made subject to, and without waiving, these objections common to all interrogatories and requests for production of documents.**

INTERROGATORIES

29. Please explain how under the Amended Stipulation and Recommendation, filed January 12, 2007, the Company is in "substantial compliance" with the policies of the state as specified in Section 4929.02 of the Revised Code?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Moreover, the request asks for a legal conclusion.

30. Please explain how under the Amended Stipulation and Recommendation, filed January 12, 2007, the Company is expected to continue to be in "substantial

compliance” with the policies of the state as specified in Section 4929.02 of the Revised Code?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission’s September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Moreover, the request asks for a legal conclusion.

31. Please explain what efforts were taken by Vectren to comply with the notification requirements of 4901:1-19-05, related to its Amended Stipulation and Recommendation?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation

(December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Without waiving objection, VEDO reminds OCC that, with OCC's agreement, VEDO sought and obtained a waiver of the requirements of Rule 4901-1-19-05, O.A.C., as it applies to its application in this proceeding. The Amended Stipulation and Recommendation is not an application for an alternative regulation plan subject to the requirements of Rule 4901-1-19-056, O.A.C.

32. Please explain what efforts were taken by Vectren to comply with the PFN Exhibit 1 and PFN Exhibit 2 requirements, contained in Ohio Adm. Code 4901:1-19-05(A)(2), as pertaining to Vectren's Amended Stipulation and Recommendation?

RESPONSE:

See response to Interrogatory No. 31.

33. Please explain how Vectren has complied with the Exhibit requirements contained in 4901:1-19-05(C)(1) as pertaining to Vectren's Amended Stipulation and Recommendation?

RESPONSE:

See response to Interrogatory No. 31.

34. Please explain how Vectren has complied with the requirements of 4901:1-19-05(C)(2) (a)-(j) as pertaining to Vectren's Amended Stipulation and Recommendation?

RESPONSE:

See response to Interrogatory No. 31.

35. Please explain how Vectren has complied with the requirements of 4901:1-19-05(C)(3) as pertaining to Vectren's Amended Stipulation and Recommendation?

RESPONSE:

See response to Interrogatory No. 31.

36. Please explain the detailed commitments to customers that Vectren is willing to make to promote the policy of the state specified in 4929.02, as required by 4901:1-19-06(C)(2)(j)(3), as pertains to Vectren's Amended Stipulation and Recommendation.

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation

(December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

The Amended Stipulation is not an application for an alternative regulation plan subject to Rule 4901:1-19-06(C)(2)(j)(3), O.A.C. This Rule is subordinate to the requirements of Rule 4901:1-19-05, O.A.C., which has been waived as it relates to VEDO's application in this proceeding.

37. Please describe the degree of freedom from R.C. 4909.15 that is sought as pertaining to its Amended Stipulation and Recommendation.

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have

been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Moreover, the request seeks a legal conclusion.

Without waiving objection, VEDO asserts that it has not proposed to establish rates by a method different from that in Section 4909.15, Revised Code.

38. Please explain how the Amended Stipulation and Recommendation will facilitate the state's competitiveness in the global economy, consistent with 4929.02(A)(9)?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Moreover, the request seeks a legal conclusion.

39. Please explain how the Amended Stipulation and Recommendation will encourage innovation and market access for cost effective supply and demand side natural gas services and goods?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

40. Referring to Witness Ulrey's direct testimony at 18, what "informational tools and economic incentives to seek goods and services and make decisions and choices that result in more efficient use and conservation of natural gas" will be provided under the Amended Stipulation and Recommendation?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not

related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Notwithstanding the objection, the on-line tools which include the bill analyzer, energy savings appliance calculators and energy audits are available to all residential and general service customers. These tools help customers understand how their energy use compiles their monthly bills. By answering a few questions about their home or business and age of appliances can help pinpoint a variety of energy savings opportunities by adopting conservation behaviors or replacing inefficient equipment. An e-mail campaign was launched February 5th to approximately 95,000 Ohio customers to encourage them to visit the on-line tools. General energy efficiency tips are distributed in the bill inserts and dedicated web content on Vectren.com also provide information to educate customers about the benefits of energy efficient behaviors and measures that can reduce natural gas consumption as well as tax credit availability for the purchase of high efficiency equipment. On-hold messages also recommend undertaking low-cost energy efficient behaviors or measures, such as changing furnace filters regularly, using cold water to wash clothes to reduce water heating

consumption and encouraging customers to take advantage of the on-line tools.

41. Will the Amended Stipulation and Recommendation “provide customers with a convenient opportunity to obtain information and knowledge so that they can better determine the actions that might best be taken to enhance the energy value they receive through VEDO’s system” as claimed for the original stipulation by Witness Ulrey at 18? If so, please explain how this will occur under the Amended Stipulation and Recommendation?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission’s September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

42. Please provide the basis for figure presented in the Rebuttal Testimony of Witness Ulrey, at 4, pertaining to average use per residential customer of 84.7 Mcf. Has

the Company's estimate of average use per residential customer been updated? If so what is the Company's most recent estimate of average use per residential customer?

RESPONSE:

AUTHOR: Jerry Ulrey

The 84.7 was the expected Average Use Per Customer (AUPC) in the 2006 Vectren Energy Delivery of Ohio Budget. Actual AUPC for 2006 was 82.5. Expected AUPC in the 2007 Vectren Energy Delivery of Ohio Budget is 76.6.

43. What circumstances have changed since VEDO filed its application to increase rates in the prior rate case, as referenced by VEDO Witness Ulrey in his rebuttal testimony at 6, and how do these circumstances relate to the Amended Stipulation and Recommendation?

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

44. Does the Amended Stipulation and Recommendation require a commitment that VEDO make an application to continue the term of the low income program? If so, please indicate the specific language that represents this commitment.

RESPONSE:

Objection. This interrogatory seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Finally, pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006. Finally, the Amended Stipulation and Recommendation speaks for itself.

45. What is the net of tax cost to the Company of making a \$2 million contribution to fund low income energy efficiency as committed to under the Amended Stipulation and Recommendation?

RESPONSE:

AUTHOR: Jerry Benkert

The net of tax cost is \$1.3 million.

REQUESTS FOR PRODUCTION OF DOCUMENTS

34. Please provide the projected financial data required in section F of Chapter II of Appendix A to rule 4901-7-01 (applicable through 4901-1-19-05 (C)(2)(h)), through the term of the proposed plan for Vectren's Amended Stipulation and Recommendation.

Objection. This request seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

The Amended Stipulation is not an application for an alternative regulation plan subject to Appendix A to Rule 4901-7-01, O.A.C. This Rule is subordinate to the requirements of Rule 4901:1-19-05, O.A.C., which has been waived as it relates to VEDO's application in this proceeding.

35. Please provide the projected financial data through the term of the proposed plan, as required by 4901:1-19-05(C)(2)(i), under the assumption that the proposed plan is not adopted as pertains to Vectren's Amended Stipulation and Recommendation.

Objection. This request seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Without waiving objection, VEDO reminds OCC that, with OCC's agreement, VEDO sought and obtained a waiver of the requirements of Rule 4901-1-19-05, O.A.C., as it applies to its application in this proceeding. The Amended Stipulation and Recommendation is not an application for an alterative regulation plan subject to the requirements of Rule 4901-1-19-056, O.A.C.

36. Please provide a complete matrix, as required under 4901:1-19-05(C)(2)(e), showing each rate, service, or regulation that is affected by the Amended Stipulation and Recommendation and provide an explanation of how it may be affected during the term of the plan.

Objection. This request seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to

any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

Without waiving objection, VEDO reminds OCC that, with OCC's agreement, VEDO sought and obtained a waiver of the requirements of Rule 4901-1-19-05, O.A.C., as it applies to its application in this proceeding. The Amended Stipulation and Recommendation is not an application for an alternative regulation plan subject to the requirements of Rule 4901-1-19-056, O.A.C.

37. Pleas provide copies of all documents filed in the instant proceeding that purport to satisfy the notice provisions of R.C. 4909.15 as applicable pursuant to R.C. 4929.05, Revised Code.

Objection. This request seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the

discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

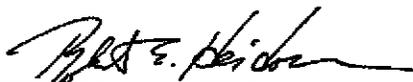
Without waiving objection, VEDO reminds OCC that, with OCC's agreement, VEDO sought and obtained a waiver of the requirements of Rule 4901-1-19-05, O.A.C., as it applies to its application in this proceeding. The Amended Stipulation and Recommendation is not an application for an alternative regulation plan subject to the requirements of Rule 4901-1-19-056, O.A.C.

38. Please provide all documents evidencing the general and specific system wide benefits associated with the implementation of the proposed energy efficiency program contained in the Amended Stipulation and Recommendation.

Objection. This request seeks information that is no longer relevant to the subject matter of this proceeding and is not reasonable calculated to lead to evidence admissible in this proceeding; it seeks information not related to any new issues raised by the Stipulation and Recommendation (December 21, 2006) and Amended Stipulation (January 12, 2007) not already contemplated by Commission's September 13, 2006 Opinion and Order and November 8, 2006 Entry on Rehearing. Pursuant to Rule 4901-1-17(A), O.A.C., the discovery for the information sought must have been completed prior to the hearing in this proceeding, which was held on April 24, 2006.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Response to Interrogatories, Requests for Production of Documents, and Requests for Admission Propounded To The Vectren Energy Delivery of Ohio Inc. By The Office Of The Ohio Consumers' Counsel, Second Set*, was provided to the persons listed below via electronic service on February 13, 2007. Parties listed below have consented to receive service of documents by electronic message.



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Vice-President and General Counsel

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Document Record

[View Image](#)**Date Filed:** 1/29/2007 9:56:02 AM**Document Type:** APP-Application**Number of pages:** 44**Case Numbers:** 05-1444-GA-UNC**Summary:** Application for review and interlocutory appeal filed by M. Grady on behalf of the Office of the Ohio Consumers' Counsel.**Native File(s):**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Vectren Energy Delivery of Ohio, Inc. for)
Approval, Pursuant to Revised Code)
Section 4929.11 of a Tariff to Recover) Case No. 05-1444-GA-UNC
Conservation Expenses and Decoupling)
Revenues Pursuant to Automatic)
Adjustment Mechanisms and for Such)
Accounting Authority as May Be)
Required to Defer Such Expenses and)
Revenues for Future Recovery through)
Such Adjustment Mechanisms.)

**AFFIDAVIT OF
JACQUELINE LAKE ROBERTS**

I, Jacqueline Lake Roberts, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and say that:

1. On January 24, 2007, OCC's Second Set of Discovery was served upon Vectren Energy Delivery of Ohio, Inc. ("Vectren") by electronic message, with the consent of Vectren;
2. On February 13, 2007, OCC received responses from Vectren to OCC's Second Set of Discovery. Such responses contained numerous objections and on the basis of these objections, Vectren failed to respond to numerous discovery requests;
3. I contacted Gretchen Hummel, counsel for Vectren, on or about February 16, 2007 seeking to resolve differences with Vectren on each of the discovery requests subject to this motion to compel. After a discussion,

during which rationale for the discovery questions were discussed, along with responses to Vectren's objections, Vectren's Counsel indicated it would stand by the objections to the discovery, as filed. It being clear that all reasonable means of resolving differences with Vectren had been exhausted, I indicated to Vectren's Counsel that OCC would be moving to compel answers to the discovery.

STATE OF OHIO

COUNTY OF FRANKLIN

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and stated the following:

I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information, and belief.

Further Affiant sayeth naught.



Jacqueline Lake Roberts, Affiant

Subscribed and sworn to before me this 27th day of February, 2007.


_____

Bonnie Morava
Notary Public, State of Ohio
My Commission Expires 09-18-2011